

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.

ORDER NO. 682

IN THE MATTER OF:

Served March 1, 1967

Application of Horse Buses,)
Inc., for a Certificate of)
Public Convenience and)
Necessity.)

Application No. 391
Docket No. 130

APPEARANCES:

PAUL J. MCGARVEY, Attorney for applicant.

MANUEL J. DAVIS and SAMUEL LANGERMAN, Attorneys for
D. C. Transit System, Inc., protestant.

S. HARRISON KAHN and STEVEN L. GROSSMAN, Attorneys for
The Gray Line, Inc., intervenor-protestant.

Horse Buses, Inc., 1081 Wisconsin Avenue, N. W.,
Washington, D. C., filed an application for a certificate of
public convenience and necessity, seeking authority to trans-
port persons for hire in horse-drawn vehicles, having a
seating capacity in excess of eight (8) passengers in the
following three classifications:

1. Horse herdic movements from points in Georgetown
to other points in Georgetown; this is a shuttle service which
would consist of a horse-drawn coach, seating 18-26 passengers,
wandering through the streets of Georgetown, picking up

passengers at various parking lots, restaurants, and stores, and carrying the passenger to another parking lot, restaurant, or store, at his direction, under a first on-first off policy.

2. Horse bus sightseeing movements from points in Georgetown to points in Georgetown and other points and places in the District of Columbia; this service would follow a pre-arranged tour itinerary, passing and/or stopping, at various points of interest.

3. Charter horse bus movements from points in Georgetown and other points in the District of Columbia to other points in the District of Columbia, in which the horse-drawn vehicle would be hired out to a group, on an hourly basis.

Notice of the application and hearing thereon was given as required pursuant to Commission directives. A timely protest to the application was filed by D. C. Transit System, Inc., ("Transit"). However, the copy of the protest served upon the applicant was directed to the wrong address. A petition to intervene was filed by The Gray Line, Inc., ("Gray Line"). The applicant objected to the admission of both parties as participants in the proceeding. The Examiner permitted both parties to participate in the proceeding, subject to consideration by the Commission upon submission of the proceeding after hearing. The Commission finds that there is little merit to the applicant's objections and they are denied accordingly; the protestant and intervenor are accorded formal status.

The evidence adduced in this proceeding includes a transcript of oral testimony of 121 pages and 5 exhibits, reflecting the testimony of 5 witnesses for the applicant and one witness for protestant, Transit. Intervenor-Protestant, Gray Line, did not offer any witnesses.

We are faced at the outset with a question of jurisdiction. Does the Compact confer jurisdiction upon us to regular horse propelled vehicles?

Article XII, Section 1(a) provides that: "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, . . ."

Section 2(a) defines a "carrier" as ". . . any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance."

Section 2(b) defines the term "motor vehicle" as ". . . any automobile, bus or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers."

Section 2(c) defines the term "street railways" as ". . . any streetcar, bus, or other similar vehicle propelled or drawn by electrical or mechanical power on rails and used for transportation of passengers."

The phrase "or other form or means of conveyance" is not defined. Does it embrace horse-drawn vehicles, or is the language modifying in nature, so as to be used to embrace only vehicles propelled by mechanical or electrical power?

There is nothing within the four corners of the Compact to guide us. Therefore, we refer to the legislative history of the Compact.

In commenting on the proposed legislation to establish the Compact, the Civil Aeronautics Board pointed out to the Congress that this language was unclear, and that it was concerned whether air-taxi transportation would fall within the jurisdiction of this Commission.^{1/}

^{1/} House Report 1621, 86 Cong. 2nd Sess., May 18, 1960, p. 34.

The Interstate Commerce Commission also commented thereon, in more direct language:^{2/} "Section 2(a) of Article XII defines the term "carrier" for purposes of the act to mean, 'any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance.' Water transportation is excluded by Section 1(a) (1). Transportation by animals is a possibility." (Emphasis supplied)

The Committee made the following terse comment on the air-taxi issue:^{3/} "Testimony developed that the basic purpose of the compact is to deal with the regulation of carriers involved in the mass movement of persons (mass transit) and that any limited air-taxi operations would, therefore, not be within the category of transportation regulated by the compact commission." It made no comment on the ICC observations. We conclude that it was the intent of the legislatures that such transportation be subject to our regulation. Special operations, such as proposed here, when conducted in motor vehicles are an integral part of the for hire transportation rendered by carriers regulated by the Commission pursuant to the Compact. It is axiomatic that regulatory laws are remedial in nature and are to be liberally construed. Our law is no exception, and in fact so provides. Article XI, Section 2. The corollary principle is that exemptions to the scope of the law are to be strictly construed. The Commission finds that the rendition of transportation for hire between points within the Metropolitan District in horse-drawn vehicles comes within the ambit of jurisdiction conferred upon the Commission by the Compact.

We turn then to the case of the applicant, which has the burden of proving that it is fit, willing and able to render the transportation proposed and that such service is required by the public convenience and necessity.

^{2/} Id., p. 40

^{3/} Id., p. 21

This application was filed by a corporation which exists in name only. The corporation was incorporated in Maryland by three men: George Y. Worthington, III, Jerry Byers, and Bish Thompson. While the enterprise was formed with the encouragement of various merchants in Georgetown, the proposal is obviously the promotional work of one of the incorporators, Mr. Worthington. The evidence indicates that the idea was conceived by Mr. Worthington, that he discussed the idea with various merchants, who, in turn, have indicated financial backing for the corporation through willingness to purchase its stock. Neither the merchants nor the incorporators have, at this juncture, committed themselves legally to invest in the business.

In fact, no organizational meetings have been held, no stock has been issued or subscribed to, and no officers have been elected. It purports to be an organization promoted by the merchants of the Georgetown area of Washington, D. C., although it is incorporated in Maryland, and is not licensed to do business in the District of Columbia.

Mr. Worthington testified that this was an attempt by the small businesses in Georgetown to help themselves by making fringe parking more convenient to shoppers, and that the charter and sightseeing service was needed to make the applicant an economic success. He stated, however, that none of the proposed services are now being offered by authorized carriers. In his opinion, none of the proposed services are competitive with existing transportation, and the tariff rates proposed (presumably because they are higher) were arrived at purposefully to eliminate any parallel or competitive comparisons with existing service.

This witness freely admitted that no financial data was filed with the application, and that none was available at the time of hearing. He explained that only a minimum of organization had been done because he felt that it would have been unwise to proceed further until this Commission rules on the application. In other words, he argues that the promoters

and backers have sufficiently established the legal entity which will operate the proposed service, and that it should not be required to go through the involved process of selling stock, establishing an office, and the myriad other steps necessary unless and until such action is warranted and feasible through the grant of authority by this Commission.

Another incorporator, a Mr. Byers, gave testimony similar to that of Mr. Worthington.

Three other witnesses testified in support of the application. Mr. Berman, an operator of a restaurant in Georgetown, stated that the proposed service could stimulate business in the Georgetown area, attracting visitors in the District of Columbia who might not otherwise visit this area. He further stated that he had been invited to participate financially in the business, through the purchase of stock of the applicant.

The second witness of the group, a co-owner with Mr. Berman, Mr. Carter, stated that he supported the application, that he had paid \$50.00 towards the creation of the corporation, that he felt the service would bring people into the Georgetown area, and "add a little more color to it." He testified that in his opinion the service was "something we needed for a long time."

The third witness, Mr. Barrueta, a 64-year old businessman, echoed the thoughts of the previous witnesses.

The vehicles in which the passengers would be transported will be authentic reproductions of public conveyances actually used in cities during the 19th Century. The Smithsonian Institution has agreed to assist in the design of the vehicles, which we are told will be built pursuant to bid according to specifications. Safety features will be suggested by Buffalo Charlie Springer, a well-known expert in that field.

Mr. Worthington professed an experience in performing this particular mode of transportation, gained from operating

a horse-drawn stage coach in Georgetown during the Thanksgiving-Christmas season in 1960-62. This operation was discontinued when the vehicle wore out.

Three different areas of argument are advanced, then, in justification for the grant of the application: (1) improved parking, through elimination of travel by car, and concomitantly, less traffic congestion; (2) promotion of business in the Georgetown area; and (3) institution of a new type of sightseeing and point-to-point transportation.

Transit adduced the testimony of a company employee, Mr. Russell, who is its Director of Traffic Research. Mr. Russell stated that one of its predecessor companies operated horse-drawn trolley vehicles in the 1880's, that one of these vehicles still exists, and that it could be converted to operate off of rails. He further stated that if the Commission finds that there is a need for the service, Transit would be willing to render it. Mr. Russell also identified the Congressional franchise granted to Transit, as well as the Certificate of Public Convenience and Necessity granted to Transit by this Commission. He also declared that he had no particular knowledge of horse-drawn vehicular transportation.

It is basic public service law in this field of regulation that the desire of an applicant to render a proposed service is not justification for the granting of a certificate, in the absence of evidence that the public convenience and necessity requires the service.

The best type of evidence to demonstrate the "need" for a particular proposed service is the testimony of those who have a need for and will make use of the service. Other means are, of course, often utilized in support of or in lieu of such evidence.

The inherent feasibility of a proposed operation is also an essential ingredient of any application for a certificate of public convenience and necessity.

We also recognize that it is inherently difficult to demonstrate the need for this type of transportation by testimonials of public witnesses.

The Commission finds that a limited grant of authority is warranted, under conditions hereinafter imposed. The transportation of persons for hire in horse-drawn vehicles over irregular routes in: (1) horse-herdic operations, point-to-point service; (2) special operations consisting of round-trip sightseeing or pleasure trips; and (3) charter operations, restricted, however, to that area known and defined as "Old Georgetown" district, as officially described by Congress (D. C. Code 35-801, 1961), is required by the public convenience and necessity.

Service of the type proposed is a distinctly different type of service from the bus service offered by protestants. Operation of this service will not affect protestants' existing service to any significant extent, if at all. It is our judgment that the Washington Metropolitan area needs a specialized service of the type authorized herein. The national institutions, monuments, and shrines are a source of great historical interest, drawing visitors to this area from throughout this country, and indeed from the entire world. The Georgetown area is of considerable historical interest, and the rendition of horse-drawn operations in the Georgetown area will lend itself well to the historical redevelopment of the "Old Georgetown" aura. However, we find little basis to extend the scope of this service outside the Georgetown area. The adverse effect on traffic elsewhere in the District of Columbia would more than offset any feasible aspect of the proposed operation. Further, there is absolutely no evidence in the record to warrant service outside the Georgetown area. The Commission is of the opinion that, restricted to Georgetown, the proposed operation is inherently feasible. The primary attraction of this service is, of course, its uniqueness in the form of a horse-drawn vehicle. This uniqueness must have a setting, which it will find in Georgetown, but not elsewhere in the District of Columbia.

Normally, in public convenience and necessity cases, we place extensive reliance on testimonials of public witnesses and the testimony of expert witnesses from the industry. In a case of this kind, however, it would be extraordinary to do so, mainly because of the unavailability of such public witnesses and the lack of "horse" expertness in the motor bus industry--certainly none were called to testify in this proceeding. Since such evidence is superficial, this case seems an obvious time to employ administrative expertise upon the facts of this record.

We turn now to the remaining issue, whether the applicant is fit, willing and able to render the service. The sole question that looms in this area is the financial qualification of applicant. It has been previously stated that a minimum of corporate organization has been accomplished. The reasons for this have been discussed herein. While no financial arrangements have been made, representatives of the applicant appear assured that money is available to the corporation from its supporters and backers--the merchants of the Georgetown area. It is the opinion of the Commission that the grant of authority should issue, conditioned upon the receipt of the promised financial means by the corporation. Under these circumstances, no certificate shall issue nor shall commence until applicant has furnished proof to the Commission and all persons of record that its financial support has been made firm. As a minimum requirement thereto, applicant shall be in receipt of the sum of \$15,000, of which at least \$5,000 shall emanate from the sale of its stock. Provided, however, that submissions of such proof shall be filed on or before May 31, 1967; otherwise, an appropriate order shall issue denying the application.

As herein conditioned, the Commission finds that applicant is fit, willing and able to render the transportation authorized herein.

One additional condition is hereby imposed. Because of traffic conditions in the Georgetown area, applicant shall

not operate or travel over the city streets between 7:00 and 9:00 o'clock A.M., and between 4:00 and 6:30 o'clock P.M., Monday through Saturday.

The applicant should be cautioned that only irregular route operations are authorized, and the horse-herdic service should not be permitted to gravitate toward fixed pickup and departure points or times, or any aspect of a regular route operation, for such will not be countenanced.

THEREFORE, IT IS ORDERED that the application of Horse Buses, Inc., for a certificate of public convenience and necessity be, and it is hereby, granted, as hereinabove set forth and subject to the qualifications and conditions theretofore described.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, reading "Melvin E. Lewis".

MELVIN E. LEWIS
Acting Executive Director